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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/757,222	01/09/2001	Dilip Chokshi	1114-2	6305

23869 7590 01/05/2004

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SYOSSET, NY 11791

EXAMINER
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DAVIS, RUTH A

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 01/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/757,222

Applicant(s)

CHOKSHI, DILIP

Examiner

Ruth A. Davis

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 50-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 50-51, 57-58 is/are rejected.
- 7) ☒ Claim(s) 52-56 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 070703
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Applicant's Request for Continued Examination has been received and entered into the case. Claims 15 – 49 have been canceled, claim 58 has been added, and claims 50 – 58 are pending and have been considered on the merits. All arguments have been fully considered.

#### ***Claim Objections***

Claims 52 – 56 are objected to as being dependent upon a rejected base claim.

#### ***Claim Rejections - 35 USC § 112***

Rejections under 35 USC 112, second paragraph have been withdrawn due to amendment.

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 50 – 51 and 57 – 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakao.

Applicant claims a composition comprising a glycoprotein matrix bound to coenzyme Q10, wherein the matrix is derived from yeast and bacteria, and is bound to the coenzyme Q10 by fermenting the yeast and bacteria in the presence of coenzyme Q10. The coenzyme Q10 is present at about 5 – 15% by weight; and the ratio of matrix to Q10 is between about 1:1 to about 10:1. Applicant additionally claims a nutritional composition comprising the composition.

Nakao teaches compositions wherein yeasts and bacteria are fermented to produce coenzyme Q (abstract, col.1 line 25-48, examples) that is recovered from the culture broth (col.1 line 55-73). Specifically, Nakao teaches that coenzyme Q10 is contained in the cell walls of microorganism which is released into the broth (or is cultured in the presence of Q10). Although Nakao does not specifically teach the Q10 is bound to the matrix, the methods of obtaining the Q10 are the same. Therefore, the Q10 of Nakao must intrinsically be bound to the matrix.

Nakao does not teach the composition wherein both bacteria and yeast are cultured together. However, Nakao does suggest various yeast and bacteria which could be cultured to produce coenzyme Q. At the time of the claimed invention, one of ordinary skill in the art would have been motivated to culture yeast and bacteria together with a reasonable expectation for successfully obtaining a coenzyme Q composition.

Nakao does not teach the compositions with the claimed amounts or ratios of Q10 to glycoprotein. However, at the time of the claimed invention, it would have been well within the purview of one of ordinary skill in the art to optimize such volumes and ratios as a matter of routine experimentation. Moreover, at the time of the claimed invention, one of ordinary skill in the art would have been motivated by routine practice to optimize the amounts of Nakao with a reasonable expectation for successfully obtaining the ubiquinone composition of Nakao.

Art Unit: 1651

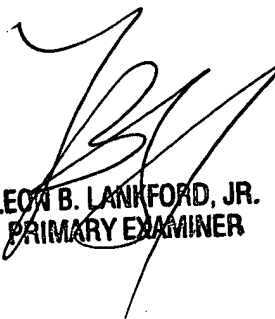
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth A. Davis whose telephone number is 703-308-6310. The examiner can normally be reached on M-H (7:00-4:30); altn. F (7:00-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on 703-308-0196. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

Effective January 20, 2004, any inquires should be made to Ruth Davis whose telephone number is 571-272-0915. The examiner's supervisor, Michael Wityshyn, can be reached at 571-272-0926.

Ruth A. Davis; rad  
December 24, 2003



LEON B. LANKFORD, JR.  
PRIMARY EXAMINER